

ASSEMBLY BILL

No. 2002

Introduced by Assembly Member Frazier

February 20, 2014

An act to amend Section 4575 of the Penal Code, and to add Section 871.7 to the Welfare and Institutions Code, relating to wireless communication devices.

LEGISLATIVE COUNSEL'S DIGEST

AB 2002, as introduced, Frazier. Wireless communication devices: local correctional facilities: juvenile halls.

Under existing law, a person in a local correctional facility who possesses a wireless communication device, including, but not limited to, a cellular telephone, pager, or wireless Internet device, who is not authorized to possess that item is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.

Existing law requires the board of supervisors of every county to provide and maintain a juvenile hall and authorizes the board to establish juvenile ranches, camps, or forestry to which persons made wards of the juvenile court may be committed. Existing law requires, except as specified, any person who knowingly brings or sends into, or who knowingly assists in bringing into, or sending into, any county juvenile hall, ranch, camp, or forestry camp, or any person who while confined in any of those institutions possesses therein, any specified controlled substance, firearm, weapon, explosive of any kind, or tear gas or tear gas weapon to be punished by imprisonment in a county jail for not more than one year or by imprisonment pursuant to specified provisions.

This bill would make, with exceptions, a person who possesses with the intent to deliver, or delivers, to an inmate or ward in a local

correctional facility or a ward confined in a juvenile hall, ranch, camp, or forestry camp, any cellular telephone or other wireless communication device or any component thereof, including, but not limited to, a subscriber identity module or memory storage device, guilty of a misdemeanor. By revising the definition of a crime and creating a new crime, the bill would impose a state-mandated local program.

This bill would provide that if a person who is visiting an inmate or ward in a local correctional facility or a ward confined in a juvenile hall, ranch, camp, or forestry camp is found to be in possession of a cellular telephone, wireless communication device, or any component thereof, upon being searched or subjected to a metal detector, that device is subject to confiscation and would be returned the same day, except as specified. The bill would require that a notice to that effect be posted in each area where visitors are searched prior to visiting with an inmate or ward. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

The bill would prohibit, except as specified, a city or county from accessing data or communications that have been captured using available technology from unauthorized use of a wireless communication device, capturing data or communications from an authorized wireless communication device, and accessing data or communications that have been captured using available technology from an authorized wireless communication device.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4575 of the Penal Code is amended to
2 read:

1 ~~4575. (a) Any person in a local correctional facility who~~
2 ~~possesses a wireless communication device, including, but not~~
3 ~~limited to, a cellular telephone, pager, or wireless Internet device,~~
4 ~~who is not authorized to possess that item is guilty of a~~
5 ~~misdemeanor, punishable by a fine of not more than one thousand~~
6 ~~dollars (\$1,000).~~

7 4575. (a) (1) *Except as otherwise authorized by law, or when*
8 *authorized by either the person in charge of the local correctional*
9 *facility or an officer of the institution empowered to give that*
10 *authorization, a person who possesses with the intent to deliver,*
11 *or delivers, to an inmate or ward in a local correctional facility*
12 *any cellular telephone or other wireless communication device or*
13 *any component thereof, including, but not limited to, a subscriber*
14 *identity module (SIM card) or memory storage device, is guilty of*
15 *a misdemeanor, punishable by imprisonment in a county jail not*
16 *exceeding six months, a fine not to exceed five thousand dollars*
17 *(\$5,000) for each device, or both that fine and imprisonment.*

18 (2) (A) *If a person visiting an inmate or ward in local*
19 *correctional facility, upon being searched or subjected to a metal*
20 *detector, is found to be in possession of a cellular telephone or*
21 *other wireless communication device or any component thereof,*
22 *including, but not limited to, a SIM card or memory storage device,*
23 *that device or component shall be subject to confiscation but shall*
24 *be returned on the same day the person visits the inmate or ward,*
25 *unless the cellular telephone or other wireless communication*
26 *device or any component thereof is held as evidence in a case*
27 *where the person is charged with a violation of paragraph (1).*

28 (B) *If, upon investigation, it is determined that no prosecution*
29 *will take place, the cellular telephone or other wireless*
30 *communication device or any component thereof shall be returned*
31 *to the owner at the owner's expense.*

32 (C) *Notice of this prohibition shall be posted in all areas where*
33 *visitors are searched prior to visitation with an inmate or ward in*
34 *a local correctional facility.*

35 (3) *An inmate who is found to be in possession of a wireless*
36 *communication device shall be subject to time credit denial or loss*
37 *of up to 90 days.*

38 (4) *A person who brings, without authorization, a wireless*
39 *communication device within the secure perimeter of a local*
40 *correctional facility is deemed to have given his or her consent to*

1 the city or county using available technology to prevent that
2 wireless device from sending or receiving telephone calls or other
3 forms of electronic communication. Notice of this provision shall
4 be posted at all public entry gates of the local correctional facility.

5 (5) A city or county shall not access data or communications
6 that have been captured using available technology from
7 unauthorized use of a wireless communication device except after
8 obtaining a valid search warrant.

9 (6) A city or county shall not capture data or communications
10 from an authorized wireless communication device, except as
11 already authorized under existing law.

12 (7) A city or county shall not access data or communications
13 that have been captured using available technology from an
14 authorized wireless communication device, except as already
15 authorized under existing law.

16 (8) If the available technology to prevent wireless
17 communications from sending and receiving telephone calls or
18 other forms of electronic communication extends beyond the secure
19 perimeter of the local correctional facility, a city or county shall
20 take all reasonable actions to correct the problem.

21 (9) A contractor or employee of a contractor or the city or
22 county who knowingly and willfully, without authorization, obtains,
23 discloses, or uses confidential information in violation of
24 paragraph (5), (6), or (7) is subject to an administrative fine or
25 civil penalty not to exceed five thousand dollars (\$5,000) for a
26 first violation, or ten thousand dollars (\$10,000) for a second
27 violation, or twenty-five thousand dollars (\$25,000) for a third or
28 subsequent violation.

29 (10) This section does not prohibit a city or county from
30 obtaining electronic communications that the city or county could
31 have lawfully obtained prior to January 1, 2015.

32 (b) ~~Any~~ A person housed in a local correctional facility who
33 possesses any tobacco products in ~~any~~ a form, including snuff
34 products, smoking paraphernalia, any device that is intended to be
35 used for ingesting or consuming tobacco, or ~~any~~ a container or
36 dispenser used for any of those products, is guilty of an infraction,
37 punishable by a fine not exceeding two hundred fifty dollars
38 (\$250).

39 (c) Money collected pursuant to this section shall be placed into
40 the inmate welfare fund, as specified in Section 4025.

1 (d) ~~Any~~A person housed in a local correctional facility who
2 possesses a handcuff key who is not authorized to possess that
3 item is guilty of a misdemeanor, punishable by imprisonment in
4 a county jail not exceeding six months, or by a fine of up to one
5 thousand dollars (\$1,000), or by both that imprisonment and fine.
6 As used in this subdivision, “handcuff key” means ~~any~~ a device
7 designed or intended to open or unlatch a handcuff.

8 (e) Subdivision (b) shall only apply to a person in a local
9 correctional facility in a county in which the board of supervisors
10 has adopted an ordinance or passed a resolution banning tobacco
11 in its correctional facilities.

12 SEC. 2. Section 871.7 is added to the Welfare and Institutions
13 Code, to read:

14 871.7. (a) Except as otherwise authorized by law, or when
15 authorized by either the person in charge of the juvenile hall, ranch,
16 camp, or forestry camp, or an officer of the institution empowered
17 to give that authorization, a person who possesses with the intent
18 to deliver, or delivers, to a ward confined in any of those
19 institutions any cellular telephone or other wireless communication
20 device or any component thereof, including, but not limited to, a
21 subscriber identity module (SIM card) or memory storage device,
22 is guilty of a misdemeanor, punishable by imprisonment in a county
23 jail not exceeding six months, a fine not to exceed five thousand
24 dollars (\$5,000) for each device, or both that fine and
25 imprisonment.

26 (b) (1) If a person visiting a ward confined in a juvenile hall,
27 ranch, camp, or forestry camp, upon being searched or subjected
28 to a metal detector, is found to be in possession of a cellular
29 telephone or other wireless communication device or any
30 component thereof, including, but not limited to, a SIM card or
31 memory storage device, that device or component is subject to
32 confiscation but shall be returned on the same day the person visits
33 the ward, unless the cellular telephone or other wireless
34 communication device or any component thereof is held as
35 evidence in a case where the person is cited for a violation of
36 subdivision (a).

37 (2) If, upon investigation, it is determined that no prosecution
38 will take place, the cellular telephone or other wireless
39 communication device or any component thereof shall be returned
40 to the owner at the owner’s expense.

1 (3) Notice of this provision shall be posted in all areas where
2 visitors are searched prior to visitation with a ward confined in a
3 juvenile hall, ranch, camp, or forestry camp.

4 (c) A person who brings, without authorization, a wireless
5 communication device within the secure perimeter of any juvenile
6 hall, ranch, camp, or forestry camp is deemed to have given his or
7 her consent to the county using available technology to prevent
8 that wireless device from sending or receiving telephone calls or
9 other forms of electronic communication. Notice of this provision
10 shall be posted at all public entry gates of the prison or institution.

11 (d) A county shall not access data or communications that have
12 been captured using available technology from unauthorized use
13 of a wireless communication device except after obtaining a valid
14 search warrant.

15 (e) A county shall not capture data or communications from an
16 authorized wireless communication device, except as already
17 authorized under existing law.

18 (f) A county shall not access data or communications that have
19 been captured using available technology from an authorized
20 wireless communication device, except as authorized under existing
21 law.

22 (g) If the available technology to prevent wireless
23 communications from sending and receiving telephone calls or
24 other forms of electronic communication extends beyond the secure
25 perimeter of the juvenile hall, ranch, camp, or forestry camp, a
26 county shall take all reasonable actions to correct the problem.

27 (h) A contractor or employee of a contractor or a county who
28 knowingly and willfully, without authorization, obtains, discloses,
29 or uses confidential information in violation of subdivision (d),
30 (e), or (f) shall be subject to an administrative fine or civil penalty
31 not to exceed five thousand dollars (\$5,000) for a first violation,
32 or ten thousand dollars (\$10,000) for a second violation, or
33 twenty-five thousand dollars (\$25,000) for a third or subsequent
34 violation.

35 (i) This section does not prohibit a county from obtaining
36 electronic communications that the county could have lawfully
37 obtained prior to January 1, 2015.

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution for certain
40 costs that may be incurred by a local agency or school district

1 because, in that regard, this act creates a new crime or infraction,
2 eliminates a crime or infraction, or changes the penalty for a crime
3 or infraction, within the meaning of Section 17556 of the
4 Government Code, or changes the definition of a crime within the
5 meaning of Section 6 of Article XIII B of the California
6 Constitution.

7 However, if the Commission on State Mandates determines that
8 this act contains other costs mandated by the state, reimbursement
9 to local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.

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